

ASSEMBLY BILL

No. 1470

**Introduced by Assembly Member Alejo
(Coauthors: Assembly Members Brown, Daly, and Dodd)**

February 27, 2015

An act to add Section 510.5 to the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1470, as introduced, Alejo. Working hours: overtime.

Existing law, with certain exceptions, establishes 8 hours as a day's work and a 40-hour workweek, and requires payment of prescribed overtime compensation for additional hours worked. Existing law establishes the Division of Labor Standards Enforcement in the Department of Industrial Relations for the enforcement of labor laws, including overtime payment. Under existing law, a person who violates the provisions regulating work hours is guilty of a misdemeanor.

This bill would exempt from overtime pay an employee with a total gross annual compensation of at least \$100,000 if that employee also regularly performs any of the exempt duties or responsibilities of an executive, administrative, or professional employee as set forth in the Industrial Welfare Commission Wage Orders. This bill would only apply to an employee whose primary duty includes office or nonmanual work, as described. By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 510.5 is added to the Labor Code, to
2 read:

3 510.5. (a) An employee with total gross annual compensation
4 of at least one hundred thousand dollars (\$100,000) is exempt from
5 Section 510, if the employee also customarily and regularly
6 performs any one or more of the exempt duties or responsibilities
7 of an executive, administrative, or professional employee as set
8 forth in the Industrial Welfare Commission Wage Orders.

9 (b) (1) "Total gross annual compensation" shall include at least
10 one thousand dollars (\$1,000) per week paid on a salary or fee
11 basis. Total gross annual compensation may also include
12 commissions, nondiscretionary bonuses, and other nondiscretionary
13 compensation earned during a 52-week period. Total gross annual
14 compensation does not include board, lodging, and other facilities,
15 and does not include payments for medical insurance, payments
16 for life insurance, contributions to retirement plans, and the cost
17 of other fringe benefits.

18 (2) If an employee's total gross annual compensation does not
19 meet the minimum amount established in subdivision (a) by the
20 last pay period of the 52-week period, the employer may, during
21 the last pay period or within one month after the end of the 52-week
22 period, make one final payment sufficient to achieve the required
23 total. If an employer fails to make that payment, this section shall
24 not apply.

25 (3) An employee who does not work a full year for the employer,
26 either because the employee is newly hired after the beginning of
27 the year or ends the employment before the end of the year, is
28 exempt from Section 510 pursuant to this section if the employee
29 receives a pro rata portion of the minimum amount established in
30 subdivision (a), based upon the number of weeks that the employee
31 will be or has been employed. An employer may make one final
32 payment as described in paragraph (2) within one month after the
33 end of employment, or this section shall not apply.

1 (4) The employer may utilize any 52-week period as the year,
2 such as a calendar year, a fiscal year, or an anniversary of hire
3 year. If the employer does not identify some other year period in
4 advance, the calendar year will apply.

5 (c) If an employee has a total gross annual compensation of at
6 least one hundred thousand dollars (\$100,000), there will be a
7 rebuttable presumption that the employee is exempt from the
8 provisions of Section 510.

9 (d) This section applies only to employees whose primary duty
10 includes performing office or nonmanual work.

11 (e) (1) This section does not apply to nonmanagement
12 production-line workers and nonmanagement employees in
13 maintenance, construction, and similar occupations, such as
14 carpenters, electricians, mechanics, plumbers, iron workers,
15 craftsmen, operating engineers, longshoremen, construction
16 workers, laborers, and other employees who perform work
17 involving repetitive operations with their hands, physical skill, and
18 energy, regardless of the amount of their compensation.

19 (2) This section does not apply to an employee covered under
20 a valid collective bargaining agreement that expressly provides
21 for the wages, hours of work, and working conditions of
22 employees, including premium wage rates for all overtime hours
23 worked.

24 SEC. 2. No reimbursement is required by this act pursuant to
25 Section 6 of Article XIII B of the California Constitution because
26 the only costs that may be incurred by a local agency or school
27 district will be incurred because this act creates a new crime or
28 infraction, eliminates a crime or infraction, or changes the penalty
29 for a crime or infraction, within the meaning of Section 17556 of
30 the Government Code, or changes the definition of a crime within
31 the meaning of Section 6 of Article XIII B of the California
32 Constitution.